



Recruitment of Candidates with a Criminal Record

Guidance

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About This Guidance

This guidance promotes and supports a culture of fair and equal recruitment of staff or volunteers who have a criminal record, whilst ensuring the safe provision of services to children, young people and adults at risk. This guidance does not supersede the law and should be read alongside your Safer Recruitment Guidance and Disclosure and Barring Service (DBS) Checks Guidance.

This guidance has been developed with the charity [Unlock](#), experts in the recruitment of persons' with a criminal record.

Inclusive Culture

Recruitment should be on the merit of the skills, qualifications and experience required for the role. The employment of staff or volunteers with criminal records is a commitment to inclusivity and diversity within your organisation. Moverover, you must respect the legal rights of anyone with a criminal record.

Ensure you have an organisational policy on recruiting persons with a criminal record which makes clear to both internal and external persons' your position on the recruitment of people with a criminal record. This policy, and the relevant procedures, ensure a fair and consistent approach. This guidance may be particularly relevant if you run a service for children and young people at risk of offending and you are recruiting individuals with lived experience.

Importantly, a criminal record, or the absence of one, may not reflect the qualities and assets of the person you are recruiting. Identifying and managing a criminal record disclosure should only be considered one element of a safe culture and working practices and considered alongside other organisational policies such as:

- Safer Recruitment Policy
- Disclosure and Barring Service Checks Guidance Checks
- Code of conduct
- Lone working

Legal Position

The Law

The law clearly outlines the rights of those with a criminal record to seek employment and the process an employer should follow. Any failure to do so e.g. seeking a check of the barring list when you're not entitled to, is illegal.

Key legislation relating to the recruitment of ex-offenders includes:

- The Rehabilitation of Offenders Act 1974
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975
- Police Act 1994
- Data Protection Act 2018

The rules regarding the automatic disclosure of cautions and convictions on a DBS certificate, and therefore the information you will be given to make a decision, are also set out in law. This relates to spent, unspent, filtered or unfiltered records.

The Rehabilitation of Offenders Act (ROA) 1974

This Act exists to facilitate complete reintegration back into society for those with a criminal record. This includes their rights to seek employment. Any role covered by ROA is only eligible for a basic DBS check.

This Act outlines that most convictions or cautions will be considered spent after a specific period of time, called the rehabilitation period, and therefore individuals are not required to disclose them as any part of the recruitment process. In these cases it is illegal to:

- refuse to employ a person (or dismiss an existing employee) because the individual has a spent caution or conviction, or,
- carry out a standard or enhanced DBS check.

Exceptions to the Act

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, outlines the exemptions to the ROA. The two types of things that can be considered exempt from the ROA:

1. convictions and cautions which must be shown
2. certain roles due to the nature of the work

When a role is exempt from the ROA you are legally entitled to request a standard or enhanced DBS check to obtain information about unspent and spent convictions or cautions to make a reasoned decision about employment. This is sometimes referred to as asking an exempt question. You are still not entitled to ask a candidate to disclose anything that would be filtered. See section 3.4.

See Disclosure and Barring Service Checks Guidance for more information.

Working with Children and Adults at Risk

Regulated activity relating to children or adults at risk (as defined by the Safeguarding Vulnerable Groups Act 2006) is exempt from the ROA and can have a barred list check requested alongside an enhanced DBS check only. An up to date list of exempt roles can be found on the DBS [website](#) or in this [Child Workforce Guide](#).

Critically it must be regulated activity. At times, this can be conditional on whether it is supervised by someone and whether the activity takes place more than 3 times in a 30 day period. If it does not meet that criteria, regardless of what you may feel, it is illegal to request an improper level of DBS certificate or barred list check.

Nobody on the barred list can carry out regulated activity with the relevant vulnerable group. It is again the law for an employer to knowingly engage that person in regulated activity. In addition an individual would be breaking the law if they were seeking, offering or engaging in regulated activity with that vulnerable group.

Fair chance recruitment

Ban The Box: Advertising

Fair chance recruitment promotes principles of inclusion and fairness within recruitment culture and the processes. [Ban the Box](#) is a campaign to increase opportunities and fair access for people with convictions to access jobs. This is a commitment to:

1. remove any tick box from job application forms that ask about a criminal record
2. consider applicants' skills, experience and ability to do the job before asking about criminal convictions
3. constantly reviewing employment processes to ensure that when a candidate discloses a criminal conviction they are given a full opportunity to explain the situation
4. ensuring that the circumstances of any conviction are fairly assessed against their relevance to and impact it may have on any role before a decision is made.

Transparency in Recruitment

Whilst you will not ask about a candidate's criminal record at the application stage, you should make it clear if the successful candidate will be subject to a DBS check. Ensure you are legally entitled to do so and state which level of check will be carried out.

If the role is legally permitted to be subject to a barred list check, you can ask a candidate to declare on their application that they are not on the relevant barred list. If they are, you can make clear to candidates that due to the nature of the role being advertised, they will not be able to proceed with an application.

Appropriate checks

A DBS check must only be carried out if suitable for the role. It is advisable for an individual DBS viability assessment to be made about each role, so as to ensure no person is at risk of exclusion during the recruitment process.

The level of DBS check is defined by the type of role they are undertaking and whether it is regulated activity or not. It must not be done by what is felt appropriate, or because an organisational policy says so. It is illegal to request a DBS check for a worker who should not be subject to one.

Posts that do not involve direct access to children or young people are covered by the Rehabilitation of Offenders Act. You are not legally permitted to carry out enhanced or standard DBS checks for a role that is covered by the ROA. For those that are exempt you may be able to carry out an enhanced or standard DBS check, although only roles that include regulated activity can request a barred check.

For more information on what is appropriate, see the [Disclosure and Barring Service Checks Guidance](#).

Conditional Offer and Asking About a Criminal Record

You do not need to ask all candidates about their criminal record. Ultimately, if you are only hiring one candidate you only need to ask one candidate about their criminal record. You will have made clear throughout the recruitment process the type of check required and this is your first measure to deter unsuitable applicants. See the Safer Recruitment Policy for more information.

When you have made a conditional offer, you should ask the candidate to complete a criminal record self-disclosure form that is relevant to the role they're applying for: covered by the ROA or

exempt. You must not ask about offences that are legally entitled to be filtered. This self-disclosure form will be the first time you receive information about a candidate's criminal record. Further guidance and template forms can be found on [Unlock's Recruitment Hub](#).

Any failure of a candidate to disclose information on this form, which is later returned on a DBS can result in the loss of a conditional offer or employment.

Making a Decision About a Criminal Record

Hiring with a criminal record

If a candidate declares a criminal record, it does not automatically exclude them from working with children or adults at risk. Whilst upholding the values of inclusive recruitment it is now your responsibility to complete an adequate and effective criminal record assessment.

This is particularly important as there are times when a category of offence can be misleading. For example, a sexual offence includes offences such as sexual assault and rape. It can also include urinating in the street on a night out, and a 17 year old sleeping with their 15 year old partner. The latter offences may not be relevant to the role you are recruiting for.

Unless you're eligible to check someone's spent criminal record for a job, it is against the law to refuse to employ them because of spent convictions.

Criminal Record Assessment

In line with the fair recruitment principles, this stage of the process is recommended after a conditional offer. Therefore you should only need to be considering this once, if at all. The process consists of the following stages:

1. A disclosure discussion with the candidate
2. Any written statement or information supplied by the candidate
3. A criminal record assessment
4. References and / or statements by others

Suitable training to assess the relevance and circumstances of offences, along with proportionate and relevant guidance and training, should be had by any person making a decision related to a person with a criminal record.

Your organisation may have it's own criminal record assessment. Alternatively you can find two templates here:

- Unlocks criminal assessment template can be found on their website [here](#), at the end of this guidance.
- Nacro's criminal record assessment form [here](#).

Specific Recruitment of those with a Criminal Record

Targeting applicants who have a criminal record because of the skills and experience required for the role e.g. working in gang culture, can be encouraged. Ensure your Policy for Recruiting Persons' with a Criminal Record is tailored to your organisation and reflects your culture and motivations.

It is vital to ensure the very best practice of relevance and proportionality with any criminal record check. In all circumstances this should be embedded as part of a wider culture of safer recruitment, management, training, monitoring and supervisions with the relevant policies and procedures to underpin that practice.

Additional considerations

Ensuring compliance with Data Protection

Being compliant with the UK Data Protection Act (2018) means you must have a lawful basis and schedule conditions to be compliant. There must not be a culture of accessing an unlawful check because it felt appropriate. See the Disclosure and Barring Service Checks Guidance for more information.

In addition information should only be shared with necessary parties and stored in line with all data protection requirements.

Insurance

It is often a concern that hiring persons with a criminal record can affect your insurance and result in higher premiums. This is not always the case. It will depend on your policy and the approach of your insurer.

Checking biases

There are many myths surrounding persons' with a criminal record; from reliability to reoffending. Be educated around your concerns and remember that the children of today are the adults of tomorrow, who we would not want to receive unfair discrimination.

Further Support

If you are concerned about your own criminal convictions you can seek information and support through [The Hub](#), Unlock.

If you are an employer looking for support and guidance visit:

- [Unlock](#)
- [Nacro](#)